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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

Case No. **25-40564**

Chapter: **13**

In re

Melissa Marie Wilkerson,

Debtor.

**OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT ON DAMAGES FOR
VIOLATION OF THE AUTOMATIC STAY**

HEARING DATE:

DATE: 11/07/2025

TIME: 11:00 AM

CTRM: 215

**TO THE HONORABLE CHARLES NOVACK, UNITED STATES BANKRUPTCY COURT
JUDGE, DEBTOR, AND OTHER INTERESTED PARTIES:**

NewRez LLC dba Shellpoint Mortgage Servicing ("SMS") hereby opposes the Debtor's Motion for Summary Judgment on Debtor's Motion for Damages for Violation of the Automatic Stay [docket 83] ("Motion"). SMS submits that based on Debtor's own evidence and argument presented by the Motion, the Court should award minimal damages or, at the very least, Debtor's attorney fees strictly up and prior to the original motion for sanctions filed on 5/22/2025 [docket 38] ("Original Motion") (exclusive of redundant, duplicative, and unreasonable fees).

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1 II.

2 DISCUSSION

3 A. THE DEBTOR SHOULD BE EQUITABLY ESTOPPED FROM ASSERTING
4 DAMAGES FOR ATTORNEY FEES.

5 Ninth Circuit has “outlined the ordinary elements of estoppel as: (1) the party to be estopped must
6 know the facts; (2) He must intend that his conduct shall be acted on or must so act that the party asserting
7 the estoppel has a right to believe it is so intended; (3) The latter must be ignorant of the true facts; and
8 (4) He must rely on the former's conduct to his injury.” *Fed. Trade Comm'n v. Directv, Inc.*, No. 15-CV-
9 01129-HSG, 2015 WL 9268119, at *3 (N.D. Cal. Dec. 21, 2015) [citing *United States v. Ruby Co.*, 588
10 F.2d 697, 703 (9th Cir. 1978)].

11 Here, all factors apply: (1) assuming the 9:06 a.m. is factually true, the Debtor knew of the 9:06
12 a.m. filing time as a matter of logic, because 9:06 a.m. is when she alleges she filed the petition; there
13 cannot be any reasonable argument otherwise; (2) the Debtor clearly intended that SMS act on her
14 4/11/2025 Demand Letter and the 9:19 a.m. filing time by demanding a rescission of the Foreclosure Sale
15 based on the 9:19 a.m. filing time [**Motion, Letter to SMS, et al., Exhibit D; compare foreclosure sale**
16 **time of 9:14 am: Motion, Trustee's Sale Certificate, Motion, Exhibit B**]; (3) SMS was ignorant of the
17 9:06 a.m. filing time; it would be impossible for SMS to know this fact unless Debtor specifically provided
18 notice thereof, as the official notice of case filing shows a 9:19 a.m. filing time [as well as the petition
19 time stamp of 9:36] [**See Motion, passim, no evidence or dispute that Debtor told SMS of the 9:06 am**
20 **and this was only revealed via the original motion**]; and (4) SMS relied on the 9:19 a.m. filing time to
21 its injury because Debtor is now asserting the 9:06 a.m. time; and despite SMS cancelling the Foreclosure
22 Sale immediately upon learning on the 9:06 a.m. time, SMS still has to defend against a stay violation
23 motion where it is subject to tens of thousands of dollars in attorney fees despite to actual harm to Debtor.

24 The Debtor seeks to get around this by arguing that it was the Original Motion that induced SMS
25 to rescind the sale and not the 9:06 am filing time allegation contained within the Motion. However, this
26 is contrary to the actual course of conduct established by the Motion: a) Debtor sent a letter to SMS
27 representing a filing time of 9:19 am [**Motion, Letter dated 4/11/2025 to SMS, et al., Exhibit D**]; b)
28 response email dated 5/11/2025 sent to Debtor's counsel setting forth the 9:14 am sale time and that the

1 sale *being prior to the filing of the petition* [**Motion, Exhibit E**]; and c) email dated 5/28/2025 from
2 foreclosure trustee to SMS regarding cancellation of the sale because of Debtor's assertion that *the*
3 *bankruptcy was actually filed at 9:06 am* [**Motion, Exhibit L**].

4 The Debtor just assumes for purposes seeking damages that the decision to rescind was due to the
5 Original Motion itself and not the 9:06 am filing time¹; however, that is not what the Motion's evidence
6 shows: it shows that the decision to rescind was not due to the Original Motion, but specifically the 9:06
7 am filing time allegation. SMS submits that if the 9:06 a.m. filing time were not the cause of respondents'
8 decision to cancel the foreclosure sale, then there would be no material reason to switch the filing time
9 from 9:19 am to 9:06 am in the first place; the Debtor simply could have filed the Original Motion with
10 the originally represented 9:19 am filing time and (based on Debtor's theory) respondents would have still
11 cancelled the foreclosure sale due to the litigation.

12 SMS notes that it is Debtor's burden to prove by a preponderance of the evidence that respondents
13 willfully violated the stay; specifically, the Debtor must prove that it is more likely than not that the
14 foreclosure sale was rescinded due the filing of the Original Motion, as opposed to the newly asserted
15 9:06 am filing time therein. *See In Re Richardson*, No. BAP SC-18-1273-LBKU, 2019 WL 4928891, at
16 *5 (B.A.P. 9th Cir. Oct. 4, 2019). As set forth above, the Debtor did not meet her burden as her own
17 evidence shows that the foreclosure sale was rescinded *specifically due to the 9:06 am filing time*. The
18 only thing that changed from before the Original Motion to after its filing was the change in filing time
19 from 9:19 am to 9:06 am. Then, the foreclosure sale was promptly cancelled.

20 Based on the foregoing, Debtor should be estopped from asserting damages, at least the attorney's
21 fees up to before the fees associated with the Original Motion, and exclusive of the fees associated with
22 the 4/11/2025 Letter, as it represented a filing time that Debtor has changed her position on.

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28 ¹ SMS also notes that a bankruptcy petition's filing date and time is perhaps the most important factor in bankruptcy in
determining parties' rights and obligations and the legal effect of the stay. Debtor's argument effectively is that it does not
matter *when* the bankruptcy was filed, only that it was filed, which is not reasonable.

1 **B. IN ANY EVENT, TO THE EXTENT THE MOTION’S EVIDENCE SUPPORTS A**
2 **STAY VIOLATION, THE COURT SHOULD AWARD MINIMAL ATTORNEY**
3 **FEES.**

4 Regarding damages for a stay violation, “most courts apply a reasonableness analysis[,]” which
5 “requires that the injured party be awarded the entire amount of actual damages *reasonably incurred* as
6 a result of a violation of the automatic stay. *In re Roman*, 283 B.R. 1, 11 (B.A.P. 9th Cir. 2002) (emphasis
7 original) (citation omitted). However, “there is also a consensus in the case law that, in determining
8 reasonable damages [for a stay violation], the bankruptcy court must examine whether the debtor could
9 have mitigated the damages.” *Id.* at 12. In determining the appropriate amount of attorneys' fees to award
10 as a sanction, courts look to two factors: “(1) what expenses or costs resulted from the violation and (2)
11 what portion of those costs was reasonable, as opposed to costs that could have been mitigated.” *Id.*

12 Finally, “[c]ourts especially scrutinize cases where the debtor's only injuries are those incurred in
13 litigating the motion for sanctions, and where there exist no circumstances warranting punitive damages.”
14 *Id.* Further, regarding punitive damages, a debtor must prove egregious conduct and establish some
15 showing of a reckless or callous disregard for the law or rights of others. *In re Koeberer*, 632 B.R. 680,
16 691 (B.A.P. 9th Cir. 2021) [citing *Stinson v. Cook Perkiss & Lew, APC (In re Stinson)*, 128 F. App'x 30,
17 31-32 (9th Cir. 2005)]. In fact, “no punitive damages should be awarded in the absence of actual damages
18 ... [because] the automatic stay afforded by section 362 is intended to be a shield protecting debtors and
19 their estates, and should not be used as a sword for their enrichment ... [and] [t]he incurrence of actual
20 damage, a measurable event, serves as a basis for a determination of an appropriate punitive damage
21 award. Where there is no actual damage, such measure does not exist”) *Id.* [citing and quoting *McHenry*
22 *v. Key Bank (In re McHenry)*, 179 B.R. 165, 168 (9th Cir. BAP 1995)].

23 As an initial matter, had the Debtor simply let respondents know that the filing time was 9:06 am
24 before starting work on the Original Motion, the attorney fees for such motion would have been avoided.
25 Again, Debtor argues that it was the Original Motion that caused the foreclosure sale cancellation and
26 not the filing time of 9:06 am. However, this ignores the Debtor’s *duty to mitigate damages*; even if
27 Debtor felt it would have been futile or a lost cause to inform respondents of the 9:06 am filing time, the
28 Debtor *still had a duty and obligation to do so* to afford opportunity for respondents to review such new

1 representation. The Debtor failed to do so and, thus, should not get attorney fees for the Original Motion.

2 It is without dispute that the foreclosure sale was very promptly cancelled after the filing of the
3 Original Motion and that no trustee's deed was ever recorded (or prepared for that matter). Therefore, in
4 the event the Court is inclined to award Debtor attorney fees, the fees should be limited to the reasonable
5 work completed up until the foreclosure sale was cancelled on 5/30/2025, not including duplicate,
6 unreasonable, or redundant work (*e.g.*, 6.5 hours on 5/19/25 to draft the Original Motion; 5.3 hours to
7 draft the Original Motion to allegedly to address arguments of respondent's counsel, which is redundant);
8 and not including the Original Motion, which could have been avoided, and the 4/11/2025 Letter.

9 Finally, SMS notes that Debtor has no 'actual damages' outside of attorney fees, which does not
10 provide a basis for punitive damages. In any event, the Motion fails to establish any basis for punitive
11 damages as there is no showing of reckless or callous behavior by SMS. *Cf. In re Roman, supra*, 283
12 B.R. at 13:

13 Debtor and her attorney were not entirely blameless in this case, however. Debtor's counsel
14 erroneously served the demand letter and draft complaint on the wrong party, and did not
15 attempt to contact Appellant between July 13, 2001, when Debtor was served with the
16 complaint, and August 28, 2001, when Debtor served the demand letter on Appellant.
17 Instead of making an obviously excessive \$5,000 demand, Debtor could have merely
18 telephoned Appellant and attempted to negotiate a reasonable settlement. When Appellant
19 offered a settlement of \$500, Debtor could have responded with a more reasonable counter-
20 offer, rather than demanding \$2,000.

21 While the facts here are not exactly the same as *Roman*, the spirit is the same: here, Debtor's
22 primary counsel sent an initial demand letter that had either the incorrect filing time (or what Debtor
23 believed at the time to be the correct filing time), which effectively caused this whole dispute. Then,
24 Debtor's secondary counsel filed the Original Motion without providing notice to respondents of the
25 *materially relevant*, new alleged filing time of 9:06 am to give respondents a chance to reconsider the
26 initial demand to cancel the foreclosure sale. Promptly thereafter, the foreclosure sale was cancelled and
27 a large demand is made to 'resolve' the Original Motion, which could have been resolved by simply
28 providing evidence of the 9:06 filing time before commencing work on the Original Motion.

Accordingly, in the event the Court is inclined to award reasonable attorney fees, it should be
capped at reasonable fees up to foreclosure sale cancellation, and exclusive of redundant, duplicate, and

1 unreasonable fees, and exclusive of Debtor's initial attorney fees related to the demand letter that
2 contained incorrect filing time.

3 **IV.**

4 **CONCLUSION**

5 Based on the foregoing, SMS respectfully requests that any damage award be strictly limited as
6 set forth above.

7 DATED: 10/24/2025

Respectfully Submitted,

8 McCalla Raymer Leibert Pierce, LLP

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10 By: /s/ Dane W. Exnowski

11 DANE W. EXNOWSKI

12 Attorneys for SMS
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1 **PROOF OF SERVICE**

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3 I, Dane Exnowski, declare:

4 1. I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My
5 business address is 301 E. Ocean Blvd, Ste 1720, Long Beach, CA 90802.

6 2. On 10/24/2025, I transmitted for service a true and correct copy of the following document
7 described as:

- 8 • OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

9
10 **VIA ECF TO:**

11 **Andrew Christensen**
12 **andrew@californiahomelawyer.com**

13
14 I declare under penalty of perjury under the laws of the United States of America that the foregoing is
15 true and correct.

16 Dated: 10/24/2025

By: /s/ Dane Exnowski
Dane Exnowski